

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### Senate Bill 373

FISCAL  
NOTE

By Senators Takubo, Woelfel, Weld, Plymale, Grady,  
and Deeds

[Introduced January 12, 2024; referred  
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-21-98; and to amend said code by adding thereto a new section,  
 3 designated §11-24-45, all relating to providing a tax credit against the state corporate net  
 4 income tax and the state personal income tax for expenditures related to the operation of  
 5 existing employer-provided or sponsored child-care facilities; defining terms; providing for  
 6 rulemaking; setting forth the amount of the credit; providing for limitation of the credit;  
 7 providing for transferrable credit available to non-profit corporations; and providing for a  
 8 recapture process.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-98. Tax credit for employers with existing child-care facilities.**

- 1 (a) Definitions -- As used in this section, the term:
- 2 (1) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the  
 3 Tax Commissioner of the State of West Virginia, or his or her delegate;
- 4 (2) "Cost of operation" means reasonable direct operational costs incurred by an employer  
 5 as a result of providing employer provided or employer sponsored child-care facilities: *Provided,*  
 6 That the term cost of operation shall exclude the cost of any property that is qualified child-care  
 7 property.
- 8 (3) "Department" or "Tax Department" means the West Virginia State Tax Department.
- 9 (4) "Employer" means any employer upon whom an income tax is imposed by this article.
- 10 (5) "Employer provided" refers to childcare offered on the premises of the employer.
- 11 (6) "Premises of the employer" refers to any location within the State of West Virginia and  
 12 located on the workplace premises of the employer providing the child care or one of the  
 13 employers providing the child care in the event that the child-care property is owned jointly or  
 14 severally by the taxpayer and one or more unaffiliated employers: *Provided,* That if such  
 15 workplace premises are impracticable or otherwise unsuitable for the on-site location of such

16 child-care facility, as determined by the commissioner, such facility may be located within a  
17 reasonable distance of the premises of the employer.

18 (7) "Qualified child-care property" means all real property, other than land, and tangible  
19 personal property for use exclusively in the improvement or operation of an employer provided  
20 child-care facility, but only if:

21 (A) The children who use the facility are primarily children of employees of:

22 (i) The taxpayer and other employers in the event that the child-care property is owned  
23 jointly or severally by the taxpayer and one or more employers; or

24 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of  
25 section 1504(a) of the Internal Revenue Code; and

26 (B) The taxpayer does not qualify for, or claim, any tax credit for the cost of operation for  
27 such qualified child-care property described in § 11-21-97 or § 11-24-44 of this code.

28 Qualified child-care property includes, but is not limited to, amounts expended on  
29 improvements, furniture, fixtures, and equipment directly related to the operation of child-care  
30 property as defined in this section.

31 (b) Credit for operating existing child-care facility. — A taxpayer who operates an existing  
32 child-care facility shall be allowed a credit against the tax imposed under this article. The  
33 aggregate amount of the credit shall equal 100 percent of the total amount expended by a  
34 taxpayer during a taxable year for the operation of an existing, qualified child-care facility less any  
35 amounts paid for by employees during a taxable year. In the case of a qualified child-care property  
36 jointly owned by two or more unaffiliated employers, each employer's credit is limited to that  
37 employer's respective contribution to the cost of operating the qualified child-care facility.

38 (c) Limitations on Existing Child-Care Facility Credit. — The tax credit allowable under  
39 subsection (b) of this section shall be subject to the following conditions and limitations:

40 (1) Such credit shall when combined with the credit allowed under subsection (b) of this  
41 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the

42 taxable year as determined without regard to any other credits;

43 (2) Any such credit claimed but not used in any taxable year may be carried forward for five  
44 years from the close of the taxable year in which the cost of operation was incurred; and

45 (3) The employer shall certify to the department the names of the employees, the name of  
46 the child-care provider, and such other information as may be required by the department to  
47 ensure that credits are granted only to employers who provide or sponsor approved childcare  
48 pursuant to this section.

49 (e) Rules. — The Tax Commissioner may promulgate such interpretive, legislative and  
50 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of  
51 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate  
52 emergency rules pursuant to the provisions of §29A-3-15 of this code.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-45. Tax credit for employers with existing child-care facilities.**

1 (a) Definitions -- As used in this section, the term:

2 (1) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the  
3 Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) "Cost of operation" means reasonable direct operational costs incurred by an employer  
5 as a result of providing employer provided or employer sponsored child-care facilities: *Provided,*  
6 That the term cost of operation shall exclude the cost of any property that is qualified child-care  
7 property.

8 (3) "Department" or "Tax Department" means the West Virginia State Tax Department.

9 (4) "Employer" means any employer upon whom an income tax is imposed by this article.

10 (5) "Employer provided" refers to childcare offered on the premises of the employer.

11 (6) "Premises of the employer" refers to any location within the State of West Virginia and  
12 located on the workplace premises of the employer providing the child care or one of the  
13 employers providing the child care in the event that the child-care property is owned jointly or

14 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such  
15 workplace premises are impracticable or otherwise unsuitable for the on-site location of such  
16 child-care facility, as determined by the commissioner, such facility may be located within a  
17 reasonable distance of the premises of the employer.

18 (7) "Qualified child-care property" means all real property, other than land, and tangible  
19 personal property for use exclusively in the improvement or operation of an employer provided  
20 child-care facility, but only if:

21 (A) The children who use the facility are primarily children of employees of:

22 (i) The taxpayer and other employers in the event that the child-care property is owned  
23 jointly or severally by the taxpayer and one or more employers; or

24 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of  
25 section 1504(a) of the Internal Revenue Code; and

26 (B) The taxpayer does not qualify for, or claim, any tax credit for the cost of operation for  
27 such qualified child-care property described in § 11-21-97 or § 11-24-44 of this code.

28 Qualified child-care property includes, but is not limited to, amounts expended on  
29 improvements, furniture, fixtures, and equipment directly related to the operation of child-care  
30 property as defined in this section.

31 (b) *Credit for operating existing child-care facility.* — A taxpayer who operates an existing  
32 child-care facility shall be allowed a credit against the tax imposed under this article. The  
33 aggregate amount of the credit shall equal 100 percent of the total amount expended by a  
34 taxpayer during a taxable year for the operation of an existing, qualified child-care facility less any  
35 amounts paid for by employees during a taxable year. In the case of a qualified child-care property  
36 jointly owned by two or more unaffiliated employers, each employer's credit is limited to that  
37 employer's respective contribution to the cost of operating the qualified child-care facility.

38 (c) *Limitations on Existing Child-Care Facility Credit.* — The tax credit allowable under  
39 subsection (b) of this section shall be subject to the following conditions and limitations:

40 (1) Such credit shall when combined with the credit allowed under subsection (b) of this  
41 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the  
42 taxable year as determined without regard to any other credits;

43 (2) Any such credit claimed but not used in any taxable year may be carried forward for five  
44 years from the close of the taxable year in which the cost of operation was incurred; and

45 (3) The employer shall certify to the department the names of the employees, the name of  
46 the child-care provider, and such other information as may be required by the department to  
47 ensure that credits are granted only to employers who provide or sponsor approved childcare  
48 pursuant to this section.

49 (d) *Transferrable credit available to non-profit corporations.* — In the case of non-profit  
50 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt  
51 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated  
52 under the provisions of this section shall be available as a transferrable credit that may be  
53 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this  
54 article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant  
55 shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3)  
56 of this code. The Tax Department shall within 90 days certify the amount of transferrable credit  
57 available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or  
58 assignee of non-profit corporation credits certified to a non-profit corporation under this section  
59 takes the transferred, purchased, or assigned credits subject to any limitations placed on the  
60 amount of credit taken in a given year by §11-24-45(b) and §11-24-45(c) of this code.

61 (e) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and  
62 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of  
63 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate  
64 emergency rules pursuant to the provisions of §29A-3-15 of this code.

NOTE: The purpose of this bill is to provide a tax credit against the state corporate net income tax and the state personal income tax for expenditures related to the operation of existing employer-provided or sponsored child-care facilities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.